SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 15 1971
ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71 - 538

CITY OF DETROIT,
a Michigan Municipal Corporation,
Petitioner-Plaintiff,

vs.

GARMENT CORPORATION OF AMERICA,
a Michigan Corporation,
Respondent-Defendant.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN DIVISION I AND APPENDIX

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WO. 1-4710—WO. 1-4711

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN DIVISION I

To: *The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioner-defendant City of Detroit, a Michigan Municipal Corporation, prays that a writ of certiorari issue to review the judgment of the Michigan Court of Appeals, Division I, entered in the above-entitled consolidated action on April 23, 1971, from which an application for leave to appeal was sought and denied by the Supreme Court of Michigan on July 20, 1971.

A. OPINIONS BELOW

The opinion of the Michigan Court of Appeals, an appellate court of said State, appears in 189 N.W. 2d 72 (1971) (Appendix A). It reversed and struck down an increase in the 1969 assessment against respondent-plaintiff ordered by the State Tax Commission on June 25, 1970 with respect to certain personal property claimed immune as imports from local ad valorem taxes. The opinion of said State Tax Commission is not reported. It is printed hereafter as Appendix B.

Denial of application timely filed for leave to appeal to Supreme Court of Michigan issued on July 20, 1971 appears in — N.W. 2d — (1971).

B. JURISDICTION

(1) Involved herein is a determination by the Court of Appeals reversing and striking down an order of the State Tax Commission issued June 25, 1970. The State Tax Commission is the highest administrative reviewing body authorized to pass on property assessment appeals in Michigan.

Respondent's contention was that it was the importer of certain quantities of foreign garments still in cases or cartons on tax day, held for resale in storage areas at its place of business which it claimed immune from taxation by virtue of Article I, Section 10, cl 2 of Constitution of the United States. Upon refusal of the State Tax Commission to accept the contention that said cases or cartons were the original package in the constitutional sense, respondent obtained leave to appeal to Michigan Court of Appeals

which after briefs and oral argument reversed the determination of said Tax Commission.

Timely application for leave to appeal filed with the Supreme Court of Michigan by petitioner was denied July 20, 1971.

(2) Jurisdiction of this Court to issue its writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 USCA 1257(3)).

C. QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

Are individual cardboard cartons at rest in respondent's place of storage—each generally containing five dozen work pants or ten dozen work shirts, compressed and sealed with tape by the manufacturer, then deposited into a van-type container at the Puerto Rican manufactory, then shipped from Puerto Rico to Detroit, transported to the importer's warehouse, taken from the van after the seal on the van has been broken and then placed in the importer's warehouse for temporary storage, awaiting sale to local customers—"original packages" within the meaning and intent of Art. I, § 10 of the United States Constitution and thus, immune from ad valorem taxation by state and local government?

Whether, in the constitutional sense, a van-type container and all its contents as a unit constituted the original package with the result that upon being unloaded at respondent's place of business, that portion of the contents consisting of separately bound cartons remaining on hand on tax day had lost their immunity as imports?

D. CONSTITUTIONAL PROVISIONS INVOLVED, ETC.

The provision in Article I, Sec. 10, cl 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress lay any imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such laws shall be subject to the Revision and Control of the Congress."

Statutory provisions applicable to assessments which provide a basis for Michigan personal property taxes herein are referred to below. Being too lengthy to set forth in full, the pertinent text appears in Appendix C attached hereto.

E. STATEMENT OF THE CASE

An assessment for 1969 was placed against respondent with respect to its personal property in Detroit. Such assessment served as the base for determination and levy of personal property taxes to be collected from respondent on behalf of petitioner city, the Board of Education of City of Detroit as well as the County of Wayne.

Respondent appealed to Michigan State Tax Commission, the highest administrative review agency authorized to hear and decide assessment appeals in the State. Evidence was presented on December 17, 1969. Respondent's offer of proofs being deemed inadequate, an adjournment was agreed on over to April 7, 1970. Hearing was resumed and

closed on that date. Respondent showed that the garments claimed immune, principally work shirts and pants were manufactured in and imported from Puerto Rico. The manufacturer had the garments compressed and packed into large heavy duty cardboard cases or cartons. Each case was then sealed with heavy sealing tape and reinforced with straps or steel bands.

The cartons were loaded by employees of the manufacturer at its place of business on to van-type containers of special construction designed specifically for overseas shipment for a door to door pick up and delivery by common carriers.

Use of container vans when fully loaded permitted a seal to be affixed to the door at the place of loading. It was then hauled on flat bed trucks or on retractable or removable wheels to be loaded on board ship by dockside cranes. At port of entry the process was reversed for delivery to respondent's receiving dock. Then the seal was removed and the latter's employees unloaded and stored the cartons in the warehouse area of its place of business.

Advantages of time and labor saving as well as reduction of theft or damage were evidenced by brochures presented in evidence by respondent at the hearing below.

Despite the contention that the cases or cartons were the original package and the sealed container vans were merely a method of transportation and delivery, the determination of the State Tax Commission denied the immunity from local taxation claimed by respondent based on the Import-Export clause.

The State Tax Commission upheld the assessment of petitioner's Board of Assessors which included the remaining imported inventory still in cases or cartons in respondent's warehouse on tax day.

Personal property assessments under Michigan Law are ad valorem in nature and are placed against the owner or person in possession. Taxes levied against respondent based on the increased assessment by the Tax Commission were non-discriminatory, i.e. the procedures to include and value respondent's inventory of foreign origin and rates of taxation were the same as in the case of any tangible personal property of domestic origin in Michigan in 1969 (App. C).

Respondent sought and obtained leave to appeal to the Court of Appeals. Briefs were filed and argument presented. The decision of the Court of Appeals concluded that the use of the vans did not go to the essential nature of the transaction, but to the formalities of transportation. The determination of the State Tax Commission was reversed. (App. A) 189 N.W. 2d 72 (1971).

(a) FEDERAL QUESTIONS RAISED BELOW

The constitutional immunity question based on Article I, Sec. 10, cl. 2 of the Constitution of the United States was timely and properly raised at the following stages:

Before the State Tax Commission (App. B). (See paragraph two and finding numbered 2 of order of the Commission.)

Before Michigan Court of Appeals (App. A) 189 N.W. 2d 72.

Said constitutional immunity was withheld by the State Tax Commission. The determination of the latter was struck down by the Court of Appeals which upheld the claim of immunity. The Supreme Court of Michigan denied leave to appeal.

F. REASONS FOR GRANTING THE WRIT

(a) PENDING LITIGATION IN THIS AND OTHER STATES

The constitutional issues involved in respondent's 1969 assessment presented for review are typically being raised more often in Michigan as well as in States bordering on the oceans. Others have challenged assessments with respect to goods brought into this state from foreign sources by means of container vans. The amounts of city, county and school taxes in contention are pyramiding in amount due to the ever increasing volume of foreign goods arriving by this medium from overseas and claimed immune under the import-export clause of the United States Constitution.

Early consideration by this Court of the power of a local unit of the State to include imports upon removal from such container in common with domestic goods subject to taxation under the facts herein is urgently required. It would provide much needed guidelines and eliminate much of the contention in this respect now and still to come.

(b) FAILURE TO APPLY CONSTITIONAL PRINCIPLES

The opinion of the Court below mistakenly relied on an excerpt from *Hooven and Allison Co. v. Evatt* (1945) 324 US 652, 663 which reads as follows:

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

The Hooven and Allison facts did not involve the issue of domestication by breaking of an original package. Moreover when this Court had occasion to hear and decide the later case of *Youngstown Sheet and Tube Co. v. Bower* (1959), 358 US 534, it noted at p. 545:

> "The design of the constitutional immunity was to prevent 'the great importing States from laying a tax on the non-importing States' to which the imported property is or might ultimately be destined, which would not only discriminate against them but also 'would produce countervailing measures on the part of those States whose situation was less favorable to importation.' *Brown v. Maryland, supra* (US) (12 Wheat at 440)."

(c) ORIGINAL PACKAGE DOCTRINE APPLICABLE TO CONTAINER VANS

It was the plain intent of this Court in *Brown v. Maryland, supra,* to uphold the claim of Constitutional immunity until the imported goods had completed their journey and become domesticated. One of the examples of how such goods may be acted upon by the importer so as to be considered domesticated is upon breaking of the original package.

The container van is such an original package in the constitutional sense for the reason that it had been selected and served as means of combining and transporting the imported goods from the shipper's door, brought into this country intact in this form and delivered to the door of this respondent's place of business at Detroit where the seal is broken and the cartons removed from the container van by respondent's employees.

In the lexicographical sense the contents may be deemed imports. However, in the constitutional sense, the container van is the original package under authority of *F.*

May and Co. v. New Orleans (1900) 178 US 496. For upon the opening and unloading of the means selected to bring the contents into this country through the seaboard states to the point of destination, the contents then and there become a part the general mass of domestic property.

(d) OWNERSHIP BY CARRIER OF CONTAINER VAN NOT MATERIAL

It has been held that the term original package applies to receipt of the identical package in the exact condition it was turned over to the carrier by the consignor at the initial point of shipment.

Mexican Petroleum Corp. v. South Portland (1922), 121 Me 128, 115 Atl 900, 26 ALR 965.

Under somewhat different facts, the same litigant obtained immunity in *City of Galveston v. Mexican Petroleum Corp.* (1926) 15 F. 2d 208.

These apparently conflicting views should be resolved by this Court in the present matter in line with the following.

In *Askren v. Continental Oil Co.* (1920) 252 US 444, 64 L Ed 654, 40 S Ct 355, a railroad tank car was treated as an original package.

In *Austin v. State of Tennessee* 179 US 343, 45 L Ed 224, 21 S Ct 132 (48 S.W. 305, 308) a package, bundle or aggregation of goods in the receptacle provided by carrier was held an original package.

See also *E. J. Stanton and Sons v. Los Angeles County,* (1947) 177 Pac 2d 804 and *American Mannex Corp. v. Cronvich* (1968) 207 So. 2d 778 in which Stanton was cited with approval.

CONCLUSION

It should be apparent that the decision of the Court of Appeals permits respondent to have the benefit of immunity from local taxation at the same time that it receives the benefits of door to door delivery of imported goods in a single package. The lower court overlooked that when the container van with the goods inside entered the country, it was a complete package. Thus it failed to consider the facts from the constitutional approach. The goods remained immune of course under the decisions of this Court while the complete package was being transported to respondent's place of business. Upon breaking of the seal and unloading of the cases of goods, the distinctive character of the same as imports had ended because they had reached the end of their importation journey.

In the constitutional sense, respondent's goods became a part of the general mass of property in the country subject to being treated the same as domestic goods.

WHEREFORE, petitioner requests that this petition for a writ of certiorari should be granted.

Respectfully submitted,

City of Detroit, a municipal corporation,
Petitioner- Plaintiff
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October 14, 1971

APPENDIX A

STATE OF MICHIGAN

(Court of Appeals)
Division 1

Michigan State Tax Commission and City of Detroit, Plaintiffs-Appellees, v. Garment Corporation of America, a Michigan Corporation, Defendant-Appellant.	No. 9850

Before: Danhof, P.J., Gillis and McGregor, JJ.

McGregor, J. This appeal is from the decision of the state tax commission, affirming the determination of assessment on certain of defendant's personal property. Defendant is an importer of industrial garments, which it sells and distributes throughout the United States. Its principal warehouse is in Detroit, with branch locations in Alabama and Oregon. The garments, principally work shirts and pants, are manufactured in and imported from Puerto Rico, where the garments are compressed and packed into large, heavy-duty cardboard cases or cartons, each containing quantities ranging from 5 dozen pants to 10 or 12 dozen shirts. Each case is then sealed with heavy sealing tape and reinforced with heavy straps or steel bands. These cartons are packed and are then transported to defendant by an independent common carrier.

The carriers use two types of vans or trailers of special construction, designed specifically for overseas shipment.

On each of the vans, the wheels are either removable or retractable, permitting loading and unloading by dockside cranes, as well as the stacking of the vans inside the ships. Upon arrival at the port of entry, the vans are removed from the vessel, wheels are attached to those without wheels, the vans are attached to motor cabs or tractors, and are driven to the addressee terminal. The vans themselves are basically metal bodies, each 8 feet high, 8 feet wide, and 35 feet long. Approximately 500 cartons of shirts and pants can be placed in one of these vans.

Prior to 1968, cartons shipped in this manner were recognized by the plaintiff city of Detroit as being immune from taxation, under the US Constitution, Art I, § 10(2), which provides:

> "No State shall, without the Consent of the Congress, lay any imposts or Duties on Imports or Exports . . ."

In 1968, the city of Detroit first began to assess and tax the property contained in these cartons: the city contended that the van or trailer described above which was utilized by the common carriers should be considered "original packages,"[1] and that, upon arrival of the vehicle at defendant's warehouse, the opening and unloading of the van or trailer should be considered a breaking of the original package. The result would be that the property had lost its essential character as an import and would no longer have its constitutional immunity from taxation.

This concept was sustained by the state tax commission and defendant appeals to this Court.

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[1] "Original package" refers to the doctrine first enuciated in *Brown v. Maryland* (1827), 25 US (12 Wheat) 419, 6 L ed 678, which is later discussed herein.

In the instant case, this Court is confronted with a question of whether the property remained in its original package and was thus immune from taxation or whether appellant, in removing the property from the vans or trailers in which it was shipped and delivered, has, within the meaning of the applicable law, so broken up the packages as to lose the constitutional immunity.

The reference to "original package" first appeared in *Brown v. Maryland, supra,* and was used as an illustration or method for ascertaining whether an import had been so acted upon, altered, or commingled with a common mass of property within the state as to lose its distinctive character as an import. Our Court reviewed some of the leading cases interpreting US Const. Art. I, § 10(2), in *City of Detroit v. Kenwal* (1968), 14 Mich App 657, 659, leave to appeal denied March 20, 1969, 381 Mich 811. Certiorari denied, 396 US 833, — S Ct —, — L ed 2d —; and summarized the applicable law:

> "In *Brown v. Maryland* (1827), 25 US (12 Wheat) 419, (6 L ed 678), the Supreme Court invalidated a state licensing tax and held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US (13 Wall) 29, 20 L ed 517 expanded the principles of *Brown v. Maryland* to prohibit states from levying ad valorem taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich. 22. Subsequent to *Brown v. Maryland, supra,* it has become well established that imports lose their constitutional immunity when the importer (1) sells them or (2) 'breaks up the packages,' or (3) puts them to the use for which they were imported. *Youngstown Sheet and Tube Company v. Bowers* (1959), 358 US 534 (79 S Ct 383, 3 L ed 2d 490)."

In *Kenwal, supra*, it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported, that Kenwal was the importer and entitled to the constitutional tax immunity.

The test in *Youngstown, supra*, was whether the imported goods had been so put to the use for which they were imported as to lose their character as imports, since such merchandise had entered into the plaintiff's manufacturing process. See *City of Detroit v. Klockner, Inc.* (1970), 383 Mich 76, 79, 80; see also *Knight Newspapers, Inc. v. City of Detroit* (1969), 16 Mich 438, 441.

In the instant case, the merchandise did not lose its distinctive character as an import.

We find no merit in plaintiff's contention that the defendant, in removing the imported goods from the vans in which they were shipped and delivered, has so "broken up" the original packages as to destroy their constitutional immunity. The vans were the property of the carriers who had the right to remove and store the shippers' cartons.

There is no essential difference between these vans and vehicles which are normally used in over-the-road transportation of property; the only slight difference being that they are modified to permit transportation of the entire van by ship. It can only be concluded that the vans and trailers are, in fact, vehicles, or at least instruments of transportation, and the mere use of a new technology in shipping does not destroy the tax immunity of the property shipped.

In *Hooven and Allison Company v. Evatt* (1945), 324 US 652, 663 (65 S Ct 870, 89 L ed 1252, 1262), the United States Supreme Court held:

> "When the merchandise is brought from another country to this, the extent of its immunity from state

> taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

The use of the vans here did not go to the essential nature of the transaction, but to the formalities of transportation. To hold otherwise is to extend the scope of the laws by implication or forced construction, contrary to the established law in this jurisdiction. *Topps of Warren, Inc. v. City of Warren* (1970), 27 Mich App 59.

The decision of the state tax commission is reversed. Costs to defendant.

APPENDIX B

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 11th day of May, 1970 at Lansing, Michigan.

In Re Appeal No. 0846 of Garment Corporation
of America, of the city of Detroit,
County of Wayne,
State of Michigan,

The above taxpayer appealed the assessment for the year 1969 (as confirmed by the Board of Review of the city of Detroit) of personal property located in the city of Detroit, County of Wayne, State of Michigan, in the amount of $444,680.

The taxpayer contended that the valuation of the property on appeal was excessive because the assessors have included in the assessment certain items of inventories which, are immune from Ad Valorem Taxation.

The Commission caused an examination and investigation to be made of appellant's property, copy of which was made available to appellant, who subsequently was represented at a hearing upon appellant's complaint held at Detroit, Michigan on April 7, 1970, at which hearing testimony, arguments and exhibits were presented in support of appellant's contentions.

After consideration of appellant's contentions set forth in the written Appeal No. 0846 and from the data presented at the hearing, along with the examination and investigation of the Commission's staff, the following findings of facts result:

1. Appellant's property consisted of furniture, supplies and inventories.

2. The inventory in question are work garments imported from Puerto Rico. They are packaged in cardboard containers first and then these containers are placed in a larger van for transport. The taxpayer contends the vans are simply cargo carriers and have no relevance to the import immunity of the goods which are still in their "original package", which was packed inside the van.

3. The city of Detroit contends the current market value of this property is $817,920.

4. The Commission staff's finding of value is based upon a personal property appraisal, which resulted in a current true cash value of $817,920. This appraisal was made in accordance with the procedure as given

in the State Tax Commission manual along with the applicatior of the proper multipliers, in the same manner as used in appraising all personal property.

5. Taxable property, both real and personal in the city of Detroit is assessed at a mathematical average of 46.89%, which is sustained by equalization study made by the Commission, which data has been kept routinely current by the Commission.

After these findings of facts and the consideration of all the information contained therein, it is determined, in the opinion of the Commission, that the true cash value is $817,920 and the assessment level is 46.89% of true cash value. Therefore, appellant's assessment should have been $383,500. Since appellant's assessment is $444,680, it is clearly apparent that assessment is significantly above and is not in accordance to the true cash value, reduced to the assessment level of all other real and personal property within the city of Detroit.

WHEREFORE, it is hereby ordered that the assessment of $383,500 be placed upon the assessment roll as the only true and lawful value of such property for the year 1970.

This property is located in the assessment roll in Ward No. 2, Book No. 1, Page 98, Line 15 and Item No. 1445.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

June 25, 1970

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

Edward W. Kane, Secretary

APPENDIX C

STATUTES OF MICHIGAN

Compiled Laws of Michigan 1948, 211.1

"Sec. 1. That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.2

"Sec. 2. • • •

Tax day, preparation of assessment roll, examination of properties by assessors. The taxable status of persons and real and personal property shall be determined as of each December 31, which shall be deemed the tax day for the immediately succeeding calendar year, which is also the tax year, any provisions in the charter of any city or village to the contrary notwithstanding. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after the tax day."

• • • • •

Compiled Laws of Michigan 1948, 211.8

"Sec. 8. For the purposes of taxation, personal property shall include:

1. All royalties;
2. All goods, chattels and effects within the state;

• • • • •

8. All other personal property not herein enumerated, and not especially exempted by law;"

• • • • •

Compiled Laws of Michigan 1948, 211.13

§7.13. Taxable situs of personal property; date of determination; unknown owner; assessment to beneficial owner; security interests; goods and wares used in trade, commerce or manufacture, average monthly inventory; survey, examination or review of property. Sec. 13. All tangible personal property, except as provided in section 14, shall be assessed to the owner thereof, if known, in the township in which it is located on the tax day. If the owner is not known and there is a person, firm or corporation beneficially entitled to any tangible personal property or having charge or possession thereof, then to such person, firm or corporation: Provided, That one having a security interest without possession may not be assessed as an owner of tangible personal property: Provided, That when tangible personal property is assessed to a person, firm or corporation in charge or possession of such property, such person, firm or corporation shall, unless contrary to a contractual provision, have a right of action for the amount of such taxes against the owner or person beneficially entitled to such property.

Inventories of goods, wares, materials, merchandise and supplies such as are commonly used in trade or commerce or manufacture shall, upon the filing by the owner thereof of a sworn statement with the assessing officer showing the total of such inventories for each of the preceding 12 months ending December 31, be assessed on the basis of the average monthly inventory for such 12-month period. The average monthly inventory shall be computed on the basis of the

number of months during which said inventories of goods, wares, merchandise and supplies had a taxable situs in the assessing district. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after said tax day.

• • • • •

Compiled Laws of Michigan 1948, 211.14

§7.14 Exceptions to general rule as to taxable situs. Sec. 14.

Business goods and chattels. (1) All goods and chattels situate in some township other than where the owner resides shall be assessed in the township where situate and not elswhere [sic].

• • • • •